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8 Attorneys for the United States Dept. of the Interior

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 KMI ZEOLITE, INC.; and ROBERT E. FORD,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPT. OF THE INTERIOR; *et al.*,

15 Defendants.

16 Case No.: 2:15-cv-2038-JCM-VCF

17 UNITED STATES DEPT. OF THE INTERIOR,

18 Counterclaimant,

19 v.

20 KMI ZEOLITE, INC.; ROBERT E. FORD; and R.A.M.M. CORP.,

21 Counterclaim Defendants.

22 **JOINT MOTION TO AMEND**
SCHEDULING ORDER

23 **(Fourth Request)**

24 The parties, by their undersigned attorneys, jointly request the Court to amend the
25 Scheduling Order in this matter to allow further time for the parties to conduct mediation and
26 potentially achieve a settlement of this matter. This is the fourth motion to amend the Scheduling
27 Order.

MEMORANDUM OF POINTS AND AUTHORITIES**Introduction**

These consolidated lawsuits are (1) an action under the Administrative Procedure Act (APA) seeking review of a decision by the federal Interior Board of Land Appeals (IBLA), finding that the plaintiffs in this case, KMI Zeolite, Inc. (KMI) and Robert Ford (Ford), and Counterclaim Defendant R.A.M.M. Corp. (RAMM), committed trespass on the public lands in connection with the operation of a milling site on private land; and (2) an action to quiet title to the private millsite which was used in connection with the trespasses allegedly involved in this lawsuit.

In the most recent Scheduling Order entered in this case (ECF No. 43), the Court determined that administrative review issues should be resolved first, because those issues are resolved solely by reviewing the administrative record prepared by the agency. The APA portion of the case requires no discovery, because APA review occurs solely on the administrative record developed by the agency. *Building Indus. Ass'n of the Bay Area v. U.S. Dept. of Commerce*, 792 F.3d 1027, 1032 (9th Cir. 2015). The Scheduling Order set briefing for the APA issues to begin on October 12, 2016 and conclude on December 12, 2016, with fact and expert discovery on the remaining issues, if any, to follow after the order resolving the APA issues. (ECF No. 43.)

The parties¹ have determined in good faith that there is a substantial chance that these consolidated matters can be resolved through mediation. The parties conducted an initial day-long session of mediation with Mediator Bruce Edwards of JAMS on June 8, 2016, and they have held follow-up teleconferences with the mediator on June 22, August 3, and October 5. The parties anticipate further sessions of mediation to continue to discuss methods of resolving these matters. As a result, the parties request that all deadlines in this matter be extended by 90 days, to permit a full

¹ Galtar, Inc., which is a defendant in the consolidated *ABC Recycling* case, does not join in this motion because it has filed a motion to dismiss that action which is pending.

1 opportunity to conduct settlement discussions with the mediator. The parties therefore jointly
2 propose the following schedule:

3 **PROPOSED SCHEDULING ORDER**

4 The Parties propose the following schedule and related deadlines:

5 1. Briefing on the APA issues in the *KMI Zeolite* case shall be as follows:

6 Plaintiff's and Defendants' motions for summary judgment
7 and supporting briefs due: January 12, 2017

8 Briefs in response to motions for summary judgment due: February 13, 2017

9 Reply briefs in support of summary judgment due: March 15, 2017

10 2. Initial Disclosures due: 30 days after order disposing of
11 APA issues in *KMI Zeolite*

12 3. Amendment of Pleadings due: 30 days after Initial Disclosures

13 4. Fact Discovery closes: 180 days after Initial Disclosures

14 5. **Expert Discovery:**

15 a. Last day to designate Plaintiffs' experts: 30 days after fact discovery close

16 b. Last day to designate Defendant's experts: 60 days after fact discovery close

17 c. Last day to designate rebuttal experts: 90 days after fact discovery close

18 c. Last day to complete expert discovery: 120 days after fact discovery
19 close

20 6. Dispositive Motions due: 30 days after expert discovery
21 close

22 7. **Pre-Trial Order:**

23 a. Last date to file if no dispositive motions are filed: 30 days after expert
24 discovery close

25 b. Last date to file if dispositive motions are filed: 30 days after order resolving
26 last dispositive motion

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2 For the reasons set forth above, Plaintiff and Defendants respectfully and jointly request the
3 Court to enter its SCHEDULING ORDER in conformity with the dates proposed herein.

4 Dated: October 24, 2016

5 For KMI Zeolite, Inc.:

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7 /s/ Karen Budd-Falen
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11 For ABC Recycling Industries, LLC and Robert E. Ford:

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16 For the Federal Defendants:

17 DANIEL G. BOGDEN
18 United States Attorney

19 /s/ Roger W. Wenthe
20 ROGER W. WENTHE
Assistant United States Attorney

21 For Counterclaim Defendant R.A.M.M. Corp.

22
23 /s/ Daniela LaBounty
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1 IT IS SO ORDERED.
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Date: 10-25-2016


UNITED STATES MAGISTRATE JUDGE

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the persons shown, by the method shown, on the date shown.

CM/ECF

All counsel of record

Dated: October 24, 2016

/s/ Roger W. Wenthe
ROGER W. WENTHE
Assistant United States Attorney